IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4237 OF 2004

Smt. Sindhu Uttamrao Hole ... Applicant

versus

State of Maharashtra ... Respondent

...

Mr. Uday Warunjikar and Mr. Subhash Hulyalkar, for the Applicant.

Mr. V.B. Konde Deshmukh, for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

14th October 2004

P.C.:

. Heard Counsel for the parties. Perused the record. This is second anticipatory bail application preferred by the same Applicant in respect of the same offence, being Cr. No. 11/2004. Earlier anticipatory bail application was rejected by me after considering the merits of the case on September 6, 2004. In one of the recent orders, I had observed that successive anticipatory bail applications cannot be

permitted.

. To get over that observation, learned Counsel for the Applicant has placed reliance on the reported decision of the Madhya Pradesh High Court reported in 1997 (1) Crimes 289 in the case of Imratlal Vishwakarma and others v. State of Madhya Pradesh. The Division Bench of the Madhya Pradesh High Court has taken the view that in changed circumstances, second application for anticipatory bail can be entertained. Reliance is also placed on the decision of our High Court (Single Judge) reported in 1988 (1) Bom.C.R. 22 in the case of Devi Das Raghu Nath Naik v. State. Even this decision reiterates the above legal position, as can be discerned from the dictum in para 8 of the said decision. Relying on the aforesaid decisions, the Counsel for the Applicant submits that merely because earlier anticipatory bail application has been rejected by this Court will not preclude the Applicant to take out another application.

. The learned A.P.P., on the other hand, had placed reliance on the Full Bench decision of the Calcutta High Court reported in 2003 Cri.L.J.

1, wherein it is held that successive anticipatory bail application is impermissible and should be thrown out summarily. However, for the reasons recorded hereinbelow, it is not necessary to go into the wider question.

. It is not in dispute that the earlier anticipatory bail application has been rejected after considering the arguments on merits and several circumstances have been adverted to for declining to grant anticipatory bail to the Applicant, including the seriousness of offence and that investigation was in progress. In the present application, in para 6, two circumstances have been pressed into service as changed circumstances. The first is granting of bail to accused Vinay Musale by J.M.F.C., Daund, on 13th July 2004; and the second is granting of bail to the Applicant's husband by J.M.F.C., Daund on 9th August 2004. In the first place, both these circumstances cannot be said to be subsequent circumstance or changed circumstance, as the orders were passed prior to the dismissal of earlier anticipatory bail application decided on 6th September 2004 by this Court. Even assuming that the Applicant may be justified in relying on

the said decisions, however, that by itself cannot be treated as changed circumstance. Grant of bail to some other accused cannot be a changed circumstance for the purpose of considering the prayer for anticipatory bail which has already been considered and rejected on merits. Besides the two circumstances referred to in para 6 of the application, the Counsel for the Applicant has also, during the course of arguments, brought to my notice that the Applicant has been granted anticipatory bail in connection with the companion cases registered against the Applicant. Once again, it cannot be treated as changed circumstance. Moreover, the anticipatory bail has been granted by subordinate Court. That will have no binding effect on this Court for deciding the present anticipatory bail application.

. Mr. Warunjikar in addition had relied on another decision of Division Bench of Madhya Pradesh High Court reported in 1986 Cri.L.J. 279 in the case of Ram Sahodar v. State of Madhya Pradesh. However, some observations made in this decision will be of no avail to the Applicant, because the issue, which was referred to the Division Bench has been articulated in para 1

thereof, which reads thus :

> " Whether while dismissing a bail application an order can be made to the effect that applicant cannot be released on bail on any term whatsoever till the disposal of the case against him?"

. Mr. Warunjikar also relied on order passed by this Court on 22nd January 2004 in Criminal Application No. 1371 of 2004. By this order, another Single Judge of this Court considered the second anticipatory bail application. However, this order will be of no avail, because the Court was not called upon to consider the question that arises before this Court : Whether successive anticipatory bail application can be maintained ?

. Learned Counsel for the Applicant lastly submits that the Applicant has throughout co-operated during the investigation. This fact is disputed by the learned A.P.P. Serious grievance was made on behalf of the State on the previous dates that the Applicant is absconding and is not co-operating for investigation inspite

of rejection of anticipatory bail application as back as on 6th September 2004. In the light of that grievance, this Court was required to direct the Applicant to remain personally present in Court at the time of hearing of the present application. Pursuant to the said direction, the Applicant is personally present in Court. In the facts and circumstances referred to above, I see no reason to entertain this second application for anticipatory bail preferred by the present Applicant. Hence, dismissed.

(A.M.KHANWILKAR,J.)